

STATE OF RHODE ISLAND

**BOARD OF REGENTS FOR ELEMENTARY
and SECONDARY EDUCATION**

DAVID J. ALBA

VS.

CRANSTON SCHOOL COMMITTEE

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Enclosure 7b
February 2, 2012

DECISION

This is an appeal by David J. Alba from the decision of the Commissioner whereby the Commissioner, by Decision dated August 3, 2010, found that the Appellant, David J. Alba, had not proven that his non-renewal as a principal was invalid or that his rights under the School Administrations' Rights Act (R.I.G.L. 16-12.1-1 *et. seq.*) were violated by the Cranston School Committee.

The Commissioner appropriately noted that the precedent established in the cases of Kagan v. Rhode Island Board of Regents for Elementary and Secondary Education, 1997 WL 1526517 (R.I. Super) and the Commissioner's decision in Chrabaszcz v. Johnston School Committee (January 28, 2005) that when the reason for non-renewal is the belief that a more qualified candidate is available, the burden of the employee in a subsequent hearing is quite difficult. The non-renewed individual must convince the School Committee that there is not a more qualified individual somewhere for the position. The School Committee has no burden to prove, or even identify, any underlying performance deficiencies.

We support that finding of the Commissioner as it accurately reflects the current state of the law in these cases.

The designated hearing officer held a full evidentiary hearing and made several findings of fact. From our review of the record and the well presented arguments and written briefs on behalf of the Appellant and the Cranston School Committee, we find that the analysis of the hearing officer as adopted by the Commissioner has plentiful support in the record and the Commissioner's findings and conclusions are consistent with Rhode Island law. In no manner is the decision "patently arbitrary, discriminatory or unfair" which is the standard for review by the Board of Regents. Altman v. School Committee of the Town of Scituate, 115 R.I. 399; 347 A.2d 37 (1975).

The School Committee had the authority to withhold its consent to a recommendation of renewal of the Appellant from the Superintendent. The Appellant was entitled to assert his rights to a hearing under R.I.G. L. 16-12.1 *et. seq.* The findings of the Commissioner that Appellant was provided with such hearing and that the actions of the School Committee are supported by the facts in the record provide support to the conclusion that appropriate due process was afforded to the Appellant.

The Commissioner notes that the Appellant felt the hearing was unfair as he argued he should have had information provided to him in advance of the hearing so as to be able to exercise his rights under R.I.G.L. 16-12.1 *et. seq.* The Commissioner correctly concluded there is no such obligation on the School Committee as the state of the law currently stands. Despite the heavy burden placed on Appellant, we also note the Appellant chose not to participate in the hearing, thereby eliminating and, essentially waiving, his opportunity to convince the School Committee to decide differently.

For the reasons stated, the decision of the Commissioner is affirmed. It is also observed that although not applicable in any dispositive manner to this case, the Cranston School Committee has demonstrated looseness in the evaluation process of its administrators and the implementation of its desires relating to which administrators should staff its schools. It is hoped that the Cranston School Committee will work on this area and embrace the evaluation system standards that have been approved by the Rhode Island Board of Regents.

Board of Regents for Elementary
and Secondary Education

George D. Caruolo, Chairman

_____, 2012

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on January 9, 2012.

Mathies J. Santos, Appeals Committee Chairman

_____, 2012